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1948. **File No.** O.I.P.(E.P.) 48 pt. I

Legal Department

A BRANCH

Subject:—Opinion under the Indian Press (Emergency Powers) Act 1931

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[for subsequent pps. pl. See Part II)

File No. O.I.P.(E.P.)/48 Pt. I

105-H

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I.H.H.31/5/56

Office of the R.L.A.

Article in the issue of 'Blitz' dated 29.11.1947

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Clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

.....

No doubt the article makes a malicious accusation against the Maharaja of Patiala and others that they were plotting to capture Delhi and such accusation is bound to excite hatred against them. But what is necessary under clause (f) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931 is that the hatred or contempt must be towards the administration, established in any State in India. Apparently the expression "administration" appears to have been used in clause (j) to contradistinguish it from the ruler Consequently, unless the Maharaja of Patiala is considered an integral part of the administration established in his State the article would not be hit by clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/- P.N.Lal.

Remembrancer of Legal Affairs.

U.R. to H.D.(Political),No.1009 dated the 29th January 1948.

E.K.N.30/8/56

40.

I.P.(E.P.)Act,1931. whether appeal should be filed-re:Leaflet "Blood Bath in Amalner".

Office of the R.I.A.

The accused was charged under section 18 of the Indian Press (Emergency Powers) Act, 1931. Sub.section (1) of section 18 of that Act provides that whoever makes, prints or otherwise produces, sells, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication, any unauthorised news-sheet shall be punishable with imprisonment which may extend to six months or with fine or with both. It is important to note that mere possession of an unauthorised news-sheet is no offence under this section. For convicting a person under this section, it is necessary to prove that he was found doing one of the acts mentioned in this section. The charge as worded in the chargesheet against the accused in this case was that he was found in possession and offering for sale the news-sheet in question. In other words, the charge was that he had kept for sale the unauthorised news-sheet. The question, therefore, is whether there is sufficient evidence on record to establish that the accused had thus kept for sale the news-sheet. The only evidence on the point in the record consists of the solitary word of the police constable Tatti Ex.5. In his examamination in chief, he has sworn that the accused was selling the leaflet when he saw him before the municipality. In the cross-examination, he has deposed that when the accused was thus selling the leaflet, there were 4-8 people round him. He admitted that he did not see anybody actually buying the leaflet. None of the people who are alleged to have gathered round the accused has been examined as a witness in the case. The panchnama was made later on at the police station, and it throws no light on the question whether the accused was found in selling the leaflet. All that is proved by contents of the Panchnama is that the possession.....

accused was found in possession of the leaflet. There is thus no evidence in the case except the bare word of the police constable to find that the accused had kept the leaflet in his possession for the purposes of sale. In a case of this kind, in the absence of corrobroation from other evidence, the testimony of the constable would not be considered sufficient for proving the charge. Although, therefore for reasons stated in H.L.A.'s opinion No.9557, dated 31-12-1946, it is possible to hold that the leaflet in question is a news sheet for the reason that it contains matter such as is described in clause (d) of sub.section (1) of section 4, in view of the fact that the prosecution has failed to adduce satisfactory evidence to prove that the accused had kept the news sheet with him for sale within the meaning of sub-section (1) of section 18, an appeal in this case is not likely to succeed.

Sd/-P.N.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.(Political)No.1082, dated the 30th January 1948.

Office of the R.L.A.

Article in people's Age, dated 28/12/47. Section 4(1) of the Indian Press (Emergency Powers) Act

The question raised for the consideration of the R.L.A. is whether the article under the heading "They died for freedom We slaute India's student martyrs" appearing in the issue of 'People's Age', dated the 28th December 1947 comes within section 4(1) of the Indian Press (Emergency Powers)Act, 1931.

In S.N.S. Mudliar vs. The Secretary of State for India in Council, 10 Rangoon, 165, it was held:-

> " Indeciding whether the words complained of fall within section 4(1) of the Indian Press (Emergency Powers)Act,1931, the court must have regard to the surrounding circumstances; the context in which the words appear; the persons to whom the words were addressed; the political atmosphre in which thewords were delivered; and the place where they were published. Such matters as these are ad rem nd must be borne in mind when a problem of this nature is under consideration".

In re; The Indian Express (1939 Madras Weekly Note Page 6) it was held by the Full Bench that the proper stand-point from which an offending article is to be viewed in determining its tendency is to judge how it would be understood by an average reader, reading the article as a whole and dispassionately. In Bapuji Kumbi vs. Local Government (1933,29 National Law Reporter, 244) a convict was termed a hero and the author desired the drum of his fame to reverberate in the whole universe. It was held that such expressions are excluded by the explanations of the section as they have a tendency to incite or encourage the commission of the offence of murder for which thepenalty of death is ordinarily inflicted.

The article in question descri es the incidents relating the death of four students,

namely.....

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namely, Kudiram Bose, Tegr Umbhai Khadia and Debabrata Das Gupta, who committed acts of violence in the cause of the freedom of the country and lost their lives. These students are described as 'martyrs for freedom' and the readers have been called upon the salute them. This article was published on 28th December 1947, that is to say, the date following the date of which the Police Commissioner cancelled the permission already granted for holding the students conference . Evidently this article was intended to be read by students who were attending the Students' Conference and were nursing a grievance because of the Police Commissioner's order cancelling the permission to hold the Conference and thus denying them freedom to assembly. It is also understood that the conference was itself organised by the Political Party which publishes the newspaper. Consequently, read in the context of these circumstances and in the light of the aforesaid decisions, it appear that the article can be brought within clauses (a) and (b) of section 4(i) of the Indian Press (Emergency Powers)Act, 1931, and would not be saved by any of the explanations thereof.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs.

U.M. to H.D.(Political)No.1257 dated the 5th February 1948.

Office of the R.L.A.

Articles in people's Age dated 28-12-1947.

Section 4(1) of the Indian Press (Emergency Powers)Act,1931.

The intention of the writer of an article is immaterial (see Anandabazar Patrika 60 Cal.408) and the proper stand point from which an offending article is to be viewed in determining its tendency under section 4(1) of the Indian Press (Emergency Powers) Act, 1931, is to judge how it would be understood by an average reader reading the article as a whole and dispassionately (In the matter of Dainik Nayak and Sudesh Press, 1932, 34 Cr.L.J.316). Assuming that the article was written and even printed before the Commissioner of Police banned the students conference what would be material is the effect the article would have on the minds of students who would read it when it is published. In judging the tendency, the surrounding circumstances existing on the day of publication of the article including the banning of the students' conference by the Police Commissioner will have to be taken into consideration. The relevant sections of the Indian Press (Emergency Powers)Act,1931, contemplate either printing or publishing and not printing alone. The possibility of the article being written and printed prior to the Police Commissioner's order would not affect the view expressed by the R.L.A. in his last opinion. Although the strict legal position has been correctly explained in that opinion, as the Department entertains a doubt and the doubt is not altogether imaginary and was at one stage shared by the R.L.A. it is suggested that the Advocate General may be consulted before taking action.

Sd/P.N.Lad.
Remembrancer of Legal Affairs.

H.K.H.30/5/56 .

40.

U.O. to H. Pol.No.1589. dated the 16th February

travelling in Government motor cars. Under these circumstances, is it not just that all these Ministers, instead of parodising the words, namely, service, creed and remaining as orthodox monk, should now openly embrance the creed of Grihasthashram by curbing their zeal for the justification of their conduct and satisfy all their wants through their salaries after getting them increased."

3. When read as a whole, the article contains a criticism of the divergence between the so-called practice and the principles alleged to be professed by Congress Ministeries not only in Bombay but elsewhere. A General ciritcism of this kind would not offend against the provisions of section 4 of the Indian Press (Emergency Powers)Act,1931, or against section 124A of the Indian Penal Code for the reasons given in H.L.A.'s opinion No871 Confl. datd the 19th June 1947. The article no doubt contains individual criticism for specific actions attributed one to the Hon'ble Minister for Industries and Fisheries and another to an unnamed Minister. As regards the first, namely, the bill for Rs-650, the criticism as given in this article does not seem to contain anything which can be strictly called defamatory. The second seemingly gives the impression of defamatory criticism, however, It must be confessed, that especially in the absence of full facts, it is difficult to spell out of the criticism the clear imputation of misappropriation or cheating of public revenue by making a false claim for travelling allowance; and from that point of view it would be difficult to say that the article offends agains the provisions section 500 of the I.P.C..

Sd/P.M.Lad.
Remembrancerof Legal Affairs.

B.K.N.30/5/66 U.O. to H.D .(poll.)No.1747 dated 20th Feb.1948.

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Article in "The Student" dated 24-1-1948. I.P.(E.P)Act, Explanation 2 and 3to sec.4(1).

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the cartoon at page 7 of the issue of "The Student" dated 24th January 1948 is actionable.

The cartoon in question represents the figure of a gorilla with his mouth wide open as if ready to devour and holding a gun in one hand and baton in the other and a ban order at the girdle with a pigmy figure of a student nearby,. The words printe on the breast of the gigax figure are "protector of peace" and those printed near the head are "we was attacked". It appears from this cartoon that the intention is to represent the head of the Police as a protector of peace ready to attack the students on the plea of self defence. It is possible to in interpret theis cartoon as representing that the students were attacked by the police on the plea of self defence and maintenance of peace. It is possible to spell out from this an imputation that the police used force unnecessarily towards innocent students and that the allegations of self defence were false and there was no threat to the public peace. By the disparity in the size and the equipment of the Gorialla and the student the cartoon seeks to emphasi se the falsity of the plea of self defence on the part of the police. But this only amounts to a criticism of the measures taken by the police to disperse the students assembled at the conference. it is not possible to infer that this cartoon was intended to bring into hatred or contempt government and the criticism of the police action would be saved by Explanations 2 and 3 to section 4(1) of the Indian Press(Emergency Powers) Act.

Sd/-P.M. Lad.
Remembrancer of Legal Affairs.

E.K.H.S/xx 30/5/56

H.R. to H.D. (Pol) No. 2003 & 9/2/48

Article in "New Spark" dated 31-1-1949 I.P.(E.P.)Act sec.4(1)(d).

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the article under the heading "Bombay Congress in a panic" and the article under the heading "Police protection for Congress" appearing in the issue of "New Spark" dated 31st January 1949 are actionable.

In the article under the heading "Bombay Congress in a panic" an attack is mainly directed against the Bombay Congress Party. It is alleged that the Bombay Congress Party has no mass following and that though it is now maintaining its power with the help of Government machinery, it is looked upon by the masses as their oppressors and their main enemy. The article goes on to state that Sardar Patel came down to Bombay to help the Congress Party in the Municipal elections and that the Sardar in the course of his election propaganda addressed a meeting at Kamgar Maidan giligying the Socialists as persons who encouraged strikes and appealing to the Hindu Mahasabha and R.S.S. to co-pperate with Government. Incidentially the article alleges that the Bombay Ministry is reactionary and is feeling the ground rumble under its feet and is doomed to fail. Read as a whole the article appears to criticiese the Bombay Congress Party as having lost the support of the people to regain which an attempt was made by calling Sardar Patel to enthuse the people. An attack on the Congress party would not amount to an attack on Government and a mere allegation that the Bombay Cabinet is reactionary would not excite any contempt or ill-feeling towards Government. Consequently this article is not actionable.

The second article under the heading "Police protection for Congress" contains a statement [illegible]

the meeting which was addressed by Sardar Patel at Ramnagar Maidan. It is alleged that the Sardar Patel no doubt dared to meet the workers on their own ground but he could not go there without the protection of the State apparatus which is an indication of the extent of his popularity. The police force, it is alleged, which was drafted to maintain peace at the meeting, was used to silence all opposition to the Sardar1 which is undoubtedly a "foretaste" of things to come. Read as a whole the article does not appear to be actionable since there is no tendence to any incitement to violence or ill-feeling or contempt towards Government.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll) No.2004, dated the 28th February 1948.

B.K.N.30/5/56

4C.

Office of the R.L.A.

Article in "Dainik" Cl.(a) of Sec.4(1) of the I.P(E.I) Act,1931.

The question raised for consideration of the R.L.A. is whether the passages A.B. and C. in the article appearing in the issue of "Dainik" incite to revenge and hence actionable.

2. In R vs. Sullivan (1869 11 Cox CC.5154) it was held:

> "A journalist may canvass and censure the acts of Government and their policy and indeed it is his duty . He is free to discuss their acts and their public policy and may, if he thinks proper, censure, the acts of Government and ministers."

Following that decision , the Calcutta High Court held in Dhirendranath Sen Vs.Emperior (1938 2 Cal.672) that an attempt to remove from power the ministers from office or any agitation for the repeal of an Act of Parliament cannot be seditious if no unlawful means are employed. In his opinion No.271/Conf. dated the 19th June 1947, the R.L.A. opined.:

> "The expression "Government established by law in British India" has always been held to mean the existing political system as distinguished from any particular set of administrators and a distinction has been invariably drawn between that abstract conception called Government and any particular administration. As a result of the recent pronouncement of the Privy Council in Emperor v. Sibnath Banerji, 48, Bombay Law Reporter, page 1, ministers may be regarded as officers subordinate to the Governors and to that extent a decision in Emperor v.Nemendra, I.L.R., 1939, Ca,.411 has been modified, but even as much officers, ministers cannot be said to be the Government establishmen by law. By that expression it meant a person or persons collectively in succession who are atuhorised to adminster Government for the time being. One particular set of persons may be open to objection and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals not representatives of that abstract conception which is called Government. Individuals may come and go but the Government is supposed to emain. The indivitual is transitoy and may be separately ~~xix~~. ~~xxix~~ criticised (per Batty J.in Emperor v.Bhaskar, 8, Bom.L.R.r421) . The abstract notion of Govemment is not doubt only eached by idealising the concrete; but it is a (Emergency Powers)Act contemplates and not persons who for the time being carry on the details of an administration . (I.L.R.59, Madras,1085 at p.1156).

Viewed as an attack on individual minister, the articles would not therefore, fall under clause (d) of section 4(i).

The passages A,B and C in the article no doubt contain an attack on the Honourable Minister Mr.Morarji and speak of revenge against him in the shape of his removal from high office of minister; but such attack would not,

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for the reasons stated above, be seditious. Consequently the article would not be hit by clause (d) of section 4(1) of the Indian press(Emergency Powers)Act,1931. It would be difficult to read into the passage any incitement to any violence or personal harm to the Hon.Minister consequently the article would not also come within clause (a) of section 4(1) of the Indian Press (Emergency Powers)Act. The article would not therefore seem actionable.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

I.R. to H.D.(Poll)No.2579, dated the 15th March 1948.

E.K.N.30/5/6

40.

"Free Hindusten"

Notice Under section 7(3) of the Indian Press (Emergency Powers) Act,1931.

Office of the R.L.A.

It appears that Government proposed to issue a notice under section 7(3) of the Indian Press (Emergency Powers)Act, 1931, requiring Mr. A.S. Bhide,editor, printer and publisher of the 'Free Hindusthan' to make deposit of Rs.3,000. Mr.Bhide is now in jail. The question raised for the consideration of the R.L.A. is whether there is any objection to serving the notice on Mr.Bhide in jail.

2. Section 28 of the Indian Press (Emergency Powers) Act provides that every notice under this Act shall be sent to a magistrate who shall cause it to be served in a manner provided for the service of summons under the Code of Criminal Procedure. Under section 69(1) of the Criminal Procedure Code, the summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Under this section, personal service may be made either by delivery or tendering but the tender must be a real tender of a document which is understood by the person to be served and he must have voluntarily waived actual delivery and indicated in some way that the tender was sufficient. Under section 47 of the Prisoners Act, when any process directed to any person confined in any prison is issued from any criminal or revenue court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof. Section 48(1) provides that every officer in charge of a prison upon whom service is made under section 47, shall, as soon as may be, cause a copy of the process deposited with him to be shown and explained to the

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person to whom it is directed and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and explained a copy of the process; and under sub-section (2) such certificate as aforesaid shall be prima facie evidence of the service of the process; and if the person, to whom the process is directed, requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of theprison shall cause it to be sent. Reading these provisions together, it appears that there will be no objection to the service on Mr.Ghide of the notice issued under section 7(3) of the Indian Press (Emergency Powers)Act, although he is now in prison. However, theprocedure to be followed would be as indicated in sections 47 and 48 of the Prisoners Act.

Sd/ P.N.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll)No.2554 dated the 15th March 1948,

E.H.W.31/5/5[illegible].

4C.

Office of the R.L.A.

A. cles in the "Peoples Age" dated 15-2-1948.

Indian Press (Emergency Powers) Act,1931.

The first question raise for the consideration of the R.L.A. is whether the articles appearing in the issue of "People's Age" dated the 15th February 1948 under the headings (1) "Bid to divert anti-communal drive against democratic forces, Conspiracy to shield the guilty and the top", (2) "To the gallows with the criminals" are actionable.

The first article deals with the steps taken by Government to root out communalism. It is stated that while an appeal was being made by Rajaji for forginyeness and the Bombay Home Minister Morarji Desai, was trying to appease the people by saying that the whole country was responsible for the murder of Mahatmaji and Sardar Patel was threatening the people that strong arm of law will descend on them, the people could not be satisfied nor could they be cowed down to leave the question of dealing with communalism in the hands of the leaders and the Government machinery. It is alleged that with a view to divert public mind from taking steps to crush communalism, reactionary ministers andprinces have been trying their hardest to turn the anti-communal drive into a drive against thepopular and democratic forces, particularly against the Communist Party and accordingly and steps have been taken in various provides to ban Red Guards, but the people are in no mood to forget and forgive or leave matters in the hands of Government and it will be impossible for Government to screen the communalist leaders who have been working behind the scenes. It is also alleged that there is considerable speculation that people higher up are involved in the conspiracy. The article end with a warning that, if the Government unable to stop people's

on... ...

action, tries out a diversion against the Communists and other democratic elements, they do so at their own peril.

This article read as a whole contains nothing which has a tendency to incite people to violence or to bring Government into contempt or hatred. Consequently, it does not appear to be actionable.

The second article contains an attack on the Maharaja of Alwar who, it is stated, is one of the chief conspirators for the murder of Mahatmaji. The allegations made against the Maharaja of Alwar are:-

(1) The All India Hindu Convention and several other Hindu Mahasabha and R.S.S. conferences, open and secret, took place in the Maharaja's Palace.

(2) The Maharaja has openly financed, attended, patronised some of the biggest R.S.S. rallies in Delhi and elsewhere.

(3) R.S.S. volunteers have been regularly given military training in the State's army - in the partap Regiment.

(4) Five days before the assassination, State officials were widely distributing a leaflet full of abuses for Gandhiji and calling for his murder.

(5) It is freely remoured that Godse was a state guest for several days fairly recently.

It appears that there is no allegation in the article against the administration established in Alwar. Consequently, unless the Maharaja of Alwar himself is considered as constituting the administration it would not be possible to bring this article within the ambit of clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act.

2. The second question for the consideration of the R.L.A. is whether the article published in the same issue under the heading "Benares Police Round up Communist, Forward Bloc and Student leaders" is actionable. The article gives an account of the three big processions of workers, students and city common people taken out after the ~~re-~~ing of ~~ne~~ Gandhiji's...

Gandhiji's assassination. The article goes on to say that by February 1st, people's fury became, uncontrollable and the distribution of sweets to celebrate the murder and open threats to murder more leaders provoked people so much that they attacked some offices of the Hindu Sabha and burnt the black caps of the R.S.S. as well as their papers both in the city and in the Benares Hindu University. It is further stated that students attacked the houses of Prof. Dasle and Kaviraj Partap Singh, two of the R.S.S chiefs, and punished them by burning all their propoerties. It is apparent that the article contains merely a factual statement without any comments admiring the acts of hooligans. It does not therefore appear that the article is actionable.

Sd/- B.H.Lad.

Remembrancer of Legal Affairs.

S.K.S.31/5/56 - U.R. to H.D.(Poll)No. 2513 dated the 13th March 1948.

40.

Office of the R.L.A.

Article in the issue of "Likayug" dated 29-2-1948.

Explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

The R.L.A. is requested to advise whether the article appearing in the issue of "Lokayug" dated th 29th February 1948 under the heading 'Through red Binoculars' is actionable.

In the article an attempt has been made to show that some of the persons, who do not really believe in the teachings of Gandhiji, expressed sorrow and that the tears shed by them are merely corocdile with a view to deceive the people. In the course of the article the author criticises the Congress Government as follows:

> "The present Congress Governments have no faith in several principles of Gandhiji. Although Gandhiji has propagated non-violence, yet whenever the problem of peasants' and workers' struggle crops up, the Congress Governments forget the very principle of non-violence.
>
> "Gandhiji imparted the teaching of truth but the congress Governments carry on a systematic false propaganda that 'the Communists, the working class and the All-India Trade Union Congress are endangering the security of the country.'
>
> "Gandhiji spent the whole of his life for unity. But the Congress Governments have started the work of creating a split among the workers by starting the National Trade Union Congress.
>
> "It is now a world-known fact that the Congress Ministers who declare loyalty to Gandhiji's principles in season and out of season actually act otherwise."

Disapprpiation of Government's measures is saved by explanations 2 and 3 tosection 4(1) of the Indian Press (Emergency Powers)Act. A man may criticise or comment upon any measure or act of the Government whether legislative or executive and freely express his opinion upon it. He may express the strongest condemnation of such measure and may do so severely and even unreasonably, perversely and unfairly and yet such disapprobation may not amount to sedition (see

observations.....

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Indian Press (Emergency Powers)Act,1931.

Article published in the issue of "People's Age" dated 14-3-1948.

Office of the R.L.A.

The first question raised for the conside. of the R.L.A. is whether the article whether appearing in the issue of "People's Age" dated the 14th March 1948 under the heading "Madras Government's Fascist measures against working-class movement" is actionable.

In Kamal Krishna Sircar,1935,39 Calcutta Weekly Notes,1245, the High Court considered a speech alleging the present Government of the country to belong to the capitalist class, drawing attention to the action of Government in banning certain militant class organisations and not banning others which are alleged to be capitalist organisations, describing the effect of such action to be that the capitalist organisations found it easier to put down the workers' movement alleging the motive of such action to be the common motive of all Government which is to encourage a reformist movement as a method of checking the revolutionary movement, and in the sum, recommending the Bolshevik form of Government as preferable to the present capitalist form; and held that the speech did not amount to sedition under section 124A of the Indian Penal Code. In the article in the present case it is alleged that the Madras Government has bee taking Fascist measures to crush the working-class movement. The article goes on to say: "The Ministry has launched its offensive. The aim of these Fascist tactics is clear; to behead these movements of their leadership terrorise the masses and give a free field to t owners and landlords to loot the people". Read as a whole, the article, though worded in intemperate lan uage, appears to contain criticism.....

criticism of Government's measures to crush down the labour and peasant movements with a view to support the capitalists and the landlords. Such criticism would not seem objectionable as bringing Government into hatred or contempt. The article is saved by the explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

The second question for consideration is whether the article appearing in the same issue under the heading "A Historic Turning Point" is actionable.

This article contains an account of the Second Congress of the Communist Party of India held in Calcutta from February 28 to March 7. After reviewing the political situation of the country and affirming the political attitude of the Communist Party in India, the Second Congress passed certain resolutions one of which runs as follows.

> "These open criminal murderous activities of the fascist gang are a dir ct result of the policy of the present Ministry which, allying itself with capitalist-feudal communist react'on, pursues the policy of repression against the working class, ~~the policy of repression against the working-class~~, peasant and democratic movements while conniving at the activity of communal and anti working-class gangs."

In other words, this resolution criticises the policy of Government as being more favourable to the capitalist and the landlords. For the reasons given above, this kind of criticism of the policy of Government would not seem objectionable as exciting hatred against Govemment and would be saved by Explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act.

—Sd/. P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to H.D.(Poll)No.3256 dated 5th April 1948.

E.K.N .31/5/56

Office of the R.L.A.

Article in the Issue of Janashakti D/v 15-2-1948.

Clause (d) of Sec. 4(1) of the Indian Press (Emergency Powers)Act .1931.

The question raised for the consideration of the R.L.A. is whether the article appearing in the issue of 'Janashakti' dated the 15th February 1948 under the heading" Destroy the Government's plan which is going to gag the mouths labourers in the international conferences. Call of Mr.Dange, the President of the Trade Union Congress" is actionable under clause (d) of section 4(1) of the Indian Press (Emergency Powers)Act,1931.

2. An attempt has been made in this article to criticise the policy of Government towards All India Trade Union Congress. It is alleged that the Labour Department of the Government of India has asked the Secretary of the All India Trade Union Congress for details of the organisation with a view to disentitle it from its representation in the international conference and to allow a seat in that Conference to the National Mazdoor Congress as representative of Indian Labour. While doing so, it is stated that the National Mazdoor Congress is inspired by the Indian National Congress and sponsered by t Congress Government and with a view to stablise it position, the Congress Government has been trying to crush the All India Trade Union Congress. The Government's policy towards the All India Trade Union Congress has been criticised in the following terms:-

> "Since the day on which the Congress ministry was formed, an unprecedented repression has been going on against the labouring class which has been struggling for better life under the flag of the All India Trade Union Congress. Innumerable firings took place and lives of hundreds of labourers were lost, thousands o of workers have been imprisoned, have lost their limbs, have become unemployed, have been externed and there is no place for civil liberty. Section 144 has become the general policy of the Provincial Administration. Ordinances are coming out which repress the labourers by condemning the strikes through forced agreements".

it is.....

It is asserted that with all this repressive policy of Government, the labour is becoming stronger day by day under the leadership of All India Trade Union Congress and it is alleged that since Government could do nothing to diminsh the prestige or the strength of the All India Trade Union Congress, now conspiracy has been hatched by Government to snatch away the international recognition of the trade revo-luntionary labour class. The article ends with a reiteration of the call of Mr.Dange that "all the members of the Union should unite to appose and destroy by their organisational strength, the new trick opposing the labour, planned by the Government of India to snatch away the representative position and international recognition of All India Trade Union Congress which has been opposing M. Nanda the survile follower of the Indian Capitablists and the National Mazoddor Congress, who masquarade before the world tha they alone are the representatives of Indian labour and who support the reactionary schemes in international conferences."

Read as a whole the article contains a criticism of the labour policy of the Congress Government as repressive intended to supress All India Trade Union Congres and to encourage its own sponsered National Mazdoor Congress. Mere disapprobation of the measures of Government would not be seditious unless motived throughout by desire to excite hatred, contempt and disaffection towards Government (See India in Bondage,57,Ca.1217). In Fakhr-ul-Isham, 1943 Allahabad, 429, it has held:-

> " Though it cannot be said that language currentin the political controversy of a country can never be the subject of a chrage of sedition for something m turn upon the occasin on which it is used, the context in which it occus and the surrounding circumstances of the case but ordinarily it should be difficult to found a charge of seditionupon idea sentiments or expressions which have becomepart and parel o the normal political life of the countr, and which do not excite people to disorder."

The expressions such as "destroy the plans of Government with organisational.....

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organisational strength", "unprecendented repression by Government", "use of section 144 as a general policy of Government , and "administration by Ordinances" have now become part andparcel of the normal political life of the country and do not excite people to disorder. No attempt has been made in the article to make the labourers feel discontended and ~~xhax~~ dissatisfied. On the contrary, it is asserted that the repressive policy of Government has made their Union strong. It appears, therefore, that the article does not bring or tend to bring Government into contempt or hatred nor does it excite any disaffection towards Government. Consequently, the article would be saved by explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act,1931 and would not be actionable.

Sd/- P.N.Lad.
Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No.No.3312
dated the 6th April 1946.

E.E.E.31/6/46
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Office of the R.L.A.

Article in the issue of Blitz dt/6.3.48.

Cl.(d) of Sec. 4(1)of the I.P(E.P.) Act,1931.

An article to be actionable either under clause (d) of section 4(1) of the Indian Press(Emergency Powers) Act,1931, or section 124A of the Indian Penal Code must bring or tend to bring into hatred or contempt, Government established by law in British India. 'Government'does not mean the person or persons for the time being. It means the person or persons collectively in succession who are authorised to administer the Government for the time being. There is a clear distinction between the Government and the individual officers employed under Government. Words ringing the former into hatred or contempt can be construed sedition sedition but similar words directed against the latter can only infringe the law of libel (see Rajpal 1922 3 Lahore 405). In the first article under the heading "Smash this A.I.R. Racket Mr.Umashanker has been criticised for having employe several of his relations in A.I.R. on fat salaries and also for utilizing Artists' van for private use. The Station Director, Bhatt is also criticised for using the Artists Van. There is also general criticism of A.I.R. as becoming a general employment exchange for all jobless vagabonds and society ladies who are related to officers of the Information and Broadcasting Ministry. Read as a whole, it appears that the attack is primarily direct d against Umashanker and Bhatt and other officers of the Information and Broadcasting Ministry for misusing their position. There is nothing suggestige in the article that Government had in any way connived at or encouraged the misuse of powers by these officers. It appears, therefore, that the article may amount to an infringement of the law of libel but would not be seditious. Consequently the article would not be actionable.

2. In the second article, under the heading "Nepotism Thry name is Indian Army", an attempt has been made to criticise the action of Govérnment in discharging 1200 V.C.Os. as surplus while retaining matriculate civilians in the management of the I.A.O.C. who accepted combatant terms when the war was about to end and yet managed to get themselves delcared senior. It is alleged that it would not be possible to provide for these discharged V.C.Os., for nepotism and jobbery is theorder of the day. The article ends with a quest on, "Does the present Government think that servicemen will be very enthusiastic after this?". There is no sugge tion in this article directly or indirectly warning persons against entering service in any forces. The fact that 1200 V.C.Os. were discharged without being absorbed in any other service would lend support to the criticism that the servicemen in future would not be very enthusiastic. This kind of criticism that servicemen will not be enthusiastic after this may amount to disapprobation of action of Government within the meaning of explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers)Act. Consequently the article would not be actionable.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs.

U.R, to H.D. (Pol.), No.3323 Dated 6th April 1943.

E.K.N.31/3/43

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Office of the R.L.A.

Article in the Issue of Pratod dated 22-2-48.

Clause (b) of sec.4(1) of the Indian Press (Emergency Powers) Act, 1931.

The question raised for the consideration of the R.L.A. is whether the article appearing in the issue of Pratod dated the 22nd February 1948 under the heading "Umaji Naik of Satara is killed" comes within clause (b) of section 4(1) of the Indian Press (Emergency Powers)Act,1931.

2. Under clause (b) of section 4(1) of the I.P. (E.P.) Act what is objectionable is a direct or indirect expression of approval or admiration of any offence of murder or any congnisable offence involving violence or of any person, real or ficitious, who has committed, or is alleged or represented to have committed, any such offence. In the article in question an attempt has been made to draw a comparison between Sakharam Khandero Barbate and Umaji Naik of Satara as outlaws. Themain object of this article appears to be show that Sakharam Khanderao Barbate must have been killed as treacherously as Umaji Naik of Satara and, in the course of the article, the activities of Sakharam Khanderao Barbate are described in the following terms:-

> "Sakharam was well known in this part as a celibate absconder. He considered even the women of the enemy as mother. He equalled the terroristic activities started by the village goondas in the parts on the banks of the Varana in the Valva Taluka and created a sen e of stability in the poor agriculturists by destroying the goondas. The monery lenders considered sakharam to be a terror. He was a devotee of Khandoba just like Umaji Naik. In xxxxxxxxxxx the well known movement of 1942 he carried out taskslike cutting wires, etc. But after one and a half or two years he didnot agree with other people. Therefore he began to live independantly as before. He widlded great influence andinspired awe in this part. Therefore, surprise is being expres ed at having killed him in day time in a be.el leaf plan tation were the forest growth is less than half of it and many bad conjectures are being made about the mysterious death of Sakharam."

It is not clearly stated in the article as to whether Sakharam was engaged in activities involvingxxx violence

nor do the words of approval or admiration contained in the article relate to his violent activities. As stated above, the main object of the article being to indicate that Sakharam Nanderao Barbate must have been treacherously killed, I think the article would not come within clause (b) of section 4(1) of the I.P-(E.P.) Act, even though words are found therein expressing an indirect admiration of some of his activities.

Sd/- P.M.Lad.

Remembrancer of Legal Affairs.

L.R. to H.D.(Poll)No.3476 dated 10th April 1948.

Office of the H.L.A.

Article in the issue of Lokayug dated 15-2-48

Sec.4(1) (d) of the Indian Press (E.P.)Act,1931.

What is necessary to bring an article within clause (d) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931, is that the article must ~~xxxxxx~~ contain words which must bring into hatred or contempt the Government established by law in British India or excite disaffection towares the ~~said~~ Government. There is a clear distinction between Government and the individual officers employed under the Government. Words bringing the former into hatred or contempt constitute sedition, but similar words directed against the latter can only infringe the law or libel (see Rajpal, (~~1935~~) 1922, 3 Lahore, 406) In 'Zamindar' Newspaper, Lahore (1935) 35 P.L.R. 40, it was held. "The Police Form part of Government established by law in British India as do the Magistrates, Judges and Secretaries. Where, therefore, the police as a whole are attacked the words ten directly or indirectly to bring into hatred or contempt the Government established by law in British India." In the article published in the issue of 'Lokayug' dated 15-2-1948 under the heading "Babu Shat delcares a lock-out of the Dhulia Mill", the only passage which is objectionable is as follows:-

> "They(labourers) are confident that although Nararji's Police are backing the mill-owner, they (labourers)have the full support of the public."

This passage alleges that the police are supporting the mill-owner. "The police" means the police at Dhulia. It is, therefore apparent that the attack is directed not against the police as a whole but against the Police of Dhulia, that is to say, a section of the Police,. More over, "expressions which are the stock in trade of political demagogues have no tendency to excite disaffection against the Government established by law in British India, and being of every day use

have.....

have no sting left in them, may be styled political exaggerations and cannot be said to be seditious and therefore do not come within the purview of clause (d) of section 4(1) (see Harikishan Singh (1944) 47 P.L.R. 3, P.H.). The expressions alleging partiality of the Police towards a certain section are now stock-in-trade of political demagogues. In these circumstances the article would not come within clause (d) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931 and ~~xxxxxxxxxxx xxxx~~ would not be actionable.

Sd/- P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.(spl), No. 3466 dated the 10th April 1941.

E.R.N.31/8/56

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Office of the R.L.A.

Please see R.L.A's last opinion (slip J). The R.L.A. is now requested to advise whether it would be possible for Mr.Nagarwala to file a suit for defamation.

It is presumed that the action proposed for defamation is one of prosecution under section 500 of the Indian Penal Code. It is alleged in the article that "when the members of the Industry and Supply Union joined the Port Trust members shouting slogans for full employment, the Commissioner Nagarwala, in plain clothes, pulled out his revolver and threatened the crowed. In the melee that followed, a posse of a Congress volunteers set upon and belaboured the demonstrators and others and two revolver reports were then heard" wounding Mr.Hira Narayan who later on died. The Commissioner of Police has reported that the above statement is untrue and misleading. The Commissioner of Police apparently holds that Mr. Nagarwala did not pull out his revolver and threaten the crowd and is not the officer who fired the bullets. Assuming the truth of these facts, it would still be difficult to read into the article a defamatory imputation. In the first place, the passage sidelined red does not in terms accuse Mr.Nagarwala of firing the shots, but putting the two sentences together, that innuendo might be gathered. However, the passage is capable of this interpretation that the police officer who fired the shot was merely acting in the discharge of his duty of preserving order at the meeting. It is not sufficiently strong to lead to the unmistakable inference that the police officer in question was guilty of wanton and deliberate violence against Hira Narayan. In any event, this defence is likely to be raised in any proceedings.....

proceedings, civil or criminal, for defamation. In the circumstances, it would be difficult, in my opinion, to sustain successfully proceedings for defamation, andperhaps the wiser courseo is not to take any action in that direction.

Sd/-P.M.Lad.

Remembrancer of Legal Affairs.

U.R.to H.D.(Poll) No.174.Confl dated the 24th April 1948.

Anonymous letter captioned 'Foolish Government' published in Vishal Karnatak dated 12.3.48.

Clause (a) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Office of the R.L.A.

It appears that the Secretary of the Karnatak Provincial Congress Committee received an anonymous letter, the contents of which are as follows:

"Foolish Government' Dharwar- Hubli.

Jowar (is sold) at Dharwar at 1½ seers, (and) rice at 6-7 chattaks. Abnormal rates. Is not death preferable to life? (I) shall see what I can do. It is my desire to shoot the following persons.

(1) The Collector for Belgaum and five merchants.

(2) The Collector of Dharwar and five merchants.

(3) The Commissioner of Belgaum.

(4) 10-15 leading merchants and capitalists of Hubli and Gadag.

This is only way. Wait for thefun - fun - fun. Your 'famine.'"

The ~~letter~~ letter was sent by the Secretary of the Karnatak Provincial Congress Committee to the editor of Vishal Karnatak for publication. Accordingly Vishal Karnatak published the aforesaid anonymous letter in its issue dated 12.3.1948. The R.L.A. is requested to advise whether this publication would come under clause (a) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

It appears that thematter was publish without any comments andwithoutindicating the source. The publication of the threats therefore becomes objectionable and offends against clause. (a) of section 4(1) of the Indian Press (Emergency Powers)Act, 1931 since the announcement to shoot officers and merchants would naturally tend to excit others to or encourage them to the commission of the offence of murder or otherwise cognizable offences involving violence.

Sd/ P.H.Pad.

Home Framer of Legal Affairs.

U.R.to H.D.(Poll) No.3943,dt.23/4/48.

E.K.M.31/5

Office of the R.L.A.

rticle in
Kesari, dated
30-1-1948.

Indian Press
(Emergency
Powers)Act,
1931.

It has been repeatedly emphasised by various High Courts that in order to determine whether a particular document, book or newspaper is seditious, the Court should consider the writing as a whole and in a fair, free and liberal spirit not dwelling too much upon isolated passages or upon strong words here and there which may be qualified by the context but endeavouring to gather the general effect to which the whole composition would have on the minds of the public (see Harikesan Sing, 1944, 47 P.L.R. p.3; Bal Gangadhar Tilak, 19 Bom.L.R., 211 p.272). In deciding whether the words complained of all within sub-section (1) of section 4 of the Indian Press (Emergency Powers)Act, 1931, the Court must have regard to the surrounding circumstances, the context in which the words appear, the persons to whom the words appear, the persons to whom the words were addressed, the political atmosphere in which the words were delivered and the place where they were published (see Mudaliar vs. Secretary of State for India, 1931,10 Rangoon, p.168). For the purposes of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, the intention of the accused is immaterial and the only material question is the tendency or the effect of the words, signs or visible representations complained of (see Anand Bazar Patrika, 1933, 60 cal., 408). The editorial under the caption "Dhruva Ani Trishanku" appearing in the issue of "Kesari" dated 30th January 1948 contains a criticism of the policy of Government as vacillating an appeasing towards Pakistan. This policy is considered to be unnatural, dreamy and likely to be disastrous to the country. The editorial makes an appeal to the people to try their level-best to stop this unnatural, topsy-turvy and slippery business in this country and

to.....

trengthen the Hindu Sabha organization because that was the roper means for the purpose. It ends with an expression of a een desire that this change in a policy must be brought about, o matter by whatever means, under whosoever's leadership and hrough whatever organization. It is true that the words "by natever means" may imply even violent means. But as stated bove, an article has to be read as a whole in a fair, free and iberal spirit not dwelling too much upon isolated passages r upon strong words here and there which may be qualified y the context ut endeavouring to gather the general effect hich the whole composition would have on the minds of the ublic. The editorial contains no words inciting violence. Consequently it would not be fair to infer from the words 'by whatever means" that the editorial contains an incitement o violence. This editorial ~~contains anything inimical~~. was published on 30th January 1948 on which date Mahatmaji was assassinated. The article contains nothing to show that the writer anticipated that event. No sinister meaning can, there ore, be attached to to words "by whatever means" app aring in the article, since the riter cannot presumably be credited with the knowledge of the impending assassination; nor was the political atmosphere so surcharged at the time of i s publication. Unless therefo e, some other evidence be available to connect the words "by whatever means" with the assassination we cannot legitimately connect the article with events which happened after-wards. In that view the article read as a whole would not come within the ambit of clause (a) of section 4(1) of the Indian press (Emergency Powers) Act, 1931.

Sd/ .M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll) No..172 confl..dated the 23rd April 1948.

S.N.H.31/8/56

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the article published in the issue of "people's Age" dated 1st February 1949 under the headin "Police shoot orker dead in Patel's meeting" is actionable.

It appears that the meeting, which was addressed by Sardar Pa el at Chowpati, was attended by about 500 employees of the Textile Commissioner's office and also some from the Supplies Department and Port Trust Workers who were on strike. The employees of the Textile Deprtment attended the meeting with a view to ascertain from Sardar Patel what steps Government was going to take to absorb in service those employees who were to be thrown out of employment as a result of de-control of cloth. It is alle ed that the Sardar opened out with a vicious attack on the December 29 taken strike calling the workers all sorts of names like "bullocks", "beasts" etc. He threatened total dismissal of all the Port Trust workers unless they yielded within 24 hours. Promptly the Port Trust workers got up and demanded a hearing, but were simply ordered by the Sardar to quit. This was resented by the workers and they raised the slo ans "Port Trust Workers' Union Zindabad". The Industries and Supplies Department cl rks also joined in and the addience picked up the slogans "Sardar Patel Murdabad" "Down with Morarji who fired on the students', Sdown with Nanda who cut workers' Throts," "S.K.Patil Murdabad" etc. The employees of the Te tile Department demanded "we want work; we won't tolerate unemployment," "Down with de-control". The whole audience began to demonstrate for about an hour. At this the Congress Volunteers, policemen and officers in white caps and mufti, all went into attack and beat hundreds of workers. till being unable to control the the meeting, a police officer in mufti took out his

revolver.....

and put a bullet straight into the bowels of Hari Narayan, an employee of the Textile Department. It is alleged that "while heads were thus being broken and blood flown, Sardar Patel along with all the Bombay Ministers coolly looked on. Perhaps he was honest in that. So far he had only threatened dire consequences to the workers. Now his threat was being carried out." The article ends with the following: "Hari Narayan has died a martyr's death. But by his supreme sacrifice he taught a lesson to his co-workers, not only in Bombay but, elsewhere also. The mask that shrouded Sardar Patel and the policies of the National Government has been torn away for all to see the real face it concealed.".

Read as a whole the article professes to give an account of the meeting and incidentally seems to contain an attack on Sardar Patel who it is alleged, desires to put down all labour agitation and break strikes at any costs. The passage that ~~xxx~~ while heads were being broken and blood flown Sardar Patel, along with all the Bombay Ministers, coolly looked on," accuses Sardar Patel and Bombay Ministers of indifference ~~x~~ and towards the suffering of the people. The article contains no attack of Government~~x~~ except an indication in the concluding sentence that the policies of the National overnment are to discourage all labour movements and to throttle all agitation for improving their conditions by resorting to strikes. The article cannot be said to have a tendency to bring into hatred or contempt Government established by law; nor does it tend to excite disaffection towards the Government. It is not alleged that Hari Narayan committed any acts of violence. Expression of admiration for him would not come under clause(b) of section 4(1 of the Indian Press (Emergency Powers) Act. The article would be saved by Explanations 2 and 3 to section 4(1) of the Indian Press (Emergency powers)Act.

Sd/P.N.Lad.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 3993, dated the 24th April 1948. E.R.N.31/5/56

40.

Office of the R.L.A.

This pamphlet is issued by the Communist Party. After dealing with services rendered by Mahatmaji to the Indian Nation, it is stated in the pamphlet that the Communist Party, notwithstanding the difference of opinion with Mahatma Gandhi on many important matters, must in paying tribute to his memory, appreciate the importance of the work done by him and condemn his assassination. The assassin is a Hindu and those who celebrated the death of Mahatmaji by distributing sugar and pedas among the people are not only Hindus but high caste Hindus. The pamphlet goes on to consider that this assassination was perpetrated in the capital of Delhi and under the very nose of Government. It is alleged that the attitude of the Congress leaders is mainly responsible for the perpetration of this crime for their attitude towards the Hindu Maha Sabha and the R.S.S. encouraged communalism in the country. Gandhiji who opposed communalism started fasting to counter-act it as a result of which the communalists apprehended reaction in the country and decided to bring about his death. After describing the sufferings of the people as a result of destruction of property etc. following the death of Mahatmaji, the pamphlet calls upon the people to wage war against and destroy those who side with the capitalists, zamindars and state Rulers as against the labourers, peasants and state subjects and support the exploitation of the labourers, since these persons derive inspiration from the R.S.S. a communal body. It ends with a demand for the removal from the cabinet of th ministers who are communal and also of Randhava, Deputy Commissioner, Delhi, from his office.

2. The thesis propounded in the pamphlet appears to be that the real xpersons behind the conspiracy are the Capitalists and the British Imperialism. It is stated that the Capitalists are nurturing the communalists with a view to divert the masses from the path of their struggle towards emancipation and with a view to keep all the power in their hands. After expoun this, thepamphlet calls upon the people to wage a w against the communalists and to exterminate them. There is nothing i. this thesis or its presentation which would bring thepamphlet within the ambit of section 4(1) of the Indian Press (Emergency Powers) Act or the Indian Penal Code. The Sentence at X on p.7 does not appear objectionable in its context. The passage at A on the last page cannotk be held actionable under the I.P.(E.P.) Act of the I.P.C. in view of the decisionin 34 Bom.L.R. 1682 where i was held that "an exhortation of labour to unite f destroying the capitalist system and tog fight their two enemies - Government and capitalists - who were sucking the blood of the laborers was not hit by section 153 A of the Indian Penal Code. On the Whole, the pamphlet would not appear actionable.

Sd/- P.M.Lad.

Remembrancerof Legal Affairs.

U.R. to H.D.(Poll.) No.3991 dated the 24th April 1946

E.X.N.31/5/66

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Price of the R.L.A.

All these cartoons xxxphotographs and photographs were apparently published in the issue of the Vividha Vritta dated the 4th January 1948. When they are viewed together with the captions and the commentary, the cartoons and photographs appear to have been directed against the policy of the Government in dispersing the students conference by lathi charges and tear gas bombs. They represent a pictorial disapprobation of that policy. The first cartoon and thepicture entitled "Photograph which would appear in Lokarajya" and the cartoon which represents the Hon'ble Minister for Home as a bull in a China man's shop are further intended to show that Government have been riding rough-shod over civil liberties, and that the Ministers, especially the Hon'ble the Prime Minister, were gaily engaged in giving parties to the retiring Governor while the police were dispersing citizens with force in other parts of Bombay. In short, thepurport of the whole series is (1) to express disapprobation of Government's policy of dispersing the students' conference with force,(2) to criticise the Home Minister for suppressing civil liberty, (3) to criticize the Home Minister and the Prime Minister for showing indifference to the sufferings of citizens at the Hands of the Police, and (4) to bring out the so-called divergence between the professions and the practice of thepolitical party to which the Ministry belongs.

2. The question for consideration kx is whether they tenddirectly or indirectly to bring into hatred or contempt the Government establishment by law. It is well settled that cartoons and photographs,.....

photographs, like other documents, must be considered in a fair, free and liberal spirit, and expressions and epithets which are the stock in trade of political demagogues, whether represented in words or in pictures, must not be exaggerated into a tendency to excite hatred, contempt or disaffection. The Commonsense interpretation of the document, namely, the impression it gives to a man of ordinary commonsence must be taken. It is unlikely that courts would hold that cartoons of this kind would lead a man of ordinary commonsense to think of Government in terms of con empt or hatred. It would also be dif icult to say that this series is not saved by explanations 2 and 3 which permit comments expressing disapprobation of the measures of Government with a view to obtain their alteration by lawful means or disapprobation of the administrative or other action of Government, without exciting hatred or contempt. It does not, therefore, appear that this series would be hit by clause (d) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/ P.H.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.) No.3992 dated the 24th April 1948.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the article under the heading "The Refugee Problem. Gandhiistic love of office neglected Hindu Refugees?" in the issue of Free Hindusthan dated the 25th January 1940 is actionable.

2. The article begins with accusing the central Government of ~~xxx~~ its failur to pre-plan the evacuation and rehabilitation of Hindu refugees from Pakistan and of the ill-treatment accorded to those who had the wisdom to foresee and fore-warn the Government of the catastrophe. It states that in defence of the criticism for lack of planning, Dr. Neogy, the Refugee Minister of the Government of India, asserts that the primary function of the Government being to see the safe evacuation of Hindus from Pakistan, there was no time for the Central Government to make any systematic planning of such evacuation. This kind of explanation was hardly tenable but people have been trained not to probe into Gandhian activities but to forget their past follies and Himalayan blunders of their leaders. In fact, it is alleged the Central Government was preoccupied more with consolidating its own position by checkmating the growth of Hindu Sanghathan which had gained much momentum after partition than with facing the refugee problem to find an effective solution. This policy was due to the lack of foresight on the part of the Congress leaders and their insincerity in the refugees' cause. The article ~~then~~ their goes on to describe the harrowing tale and the dreadful suffering of the refugees at the hands of the Muslims in Pakistan. It states:-

> "Hundreds of men with only one limb, women without breasts and children born on the way, each and every one is living and moving advertisement of Mohammadan fury which no sermons of Gandhi can belief. They have learnt a lesson.....

> a lesson at their own cost and cannot forget it as long as sense does not desert them. They have seen their women folk being molested, their children being roasted, their houses being burnt and their limbs being literally vivisected. Wherever such a one will stand, silent and still, will move the public mind as no fiery speeches can. His helpless [illegible] and misery will be a thousand times more impressing than Gandhiji's spiritual discourses. The sigh of such a Muhammadan bigotry will go a long way to appeal for Hindu Snaghathan than any press and platform propaganda of the "Maha Sabha."

The article then goes on to narrate how the Muslims in East Punjab were driven out. It is alleged that these Muslims were forced to evacuate by reason of pressure from within. It was done inspite of the advice and the directions of the Central Government to allow the Muslims to continue to stay in the Indian Dominion. But after the evacuation of these Muslims, the Central Government comes out with the statement that this evacuation was a result of their ingenious policy. The article alleges that various restrictions have been imposed by the Central Government on the refugees with a view to check their penetration into the entire Dominion lest the masses, if apprised of the real magnitude of the Hindu's losses in Pakistan, might rise against Government, although outwardly these restrictions can be justified on the ground of the creation of the food and supply problems. "These refugees are not allowed to enter the U.P. and Delhi provinces without a permit from the Governments. They cannot choose their place of their liking even within East Punjab to make a home. They cannot be employed by Provincial Government because of their anti-Muslim bais. They must patiently await their end in a camp or else go back to Pakistan, in accordance with Gandhiji's advice, and meet with a similar fate , of course, a bit quicker. Many Provincial Governments have refused point blank to accomodate refugees. There is no place under the sun which they can call as their own, not as a matter of right." The congress leaders' primary concern it is alleged was not to redress the grievances of refugees and to look to their difficulties but to check the spirit of anti-Congress contagion spreading into the whole of India. It was this love of office which

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guided their policy towards the refugees.

3. The burden of the article is that Government has been systematically and wilfully neglecting refugees and putting restrictions on them and that this policy was inspired by their selfish love of office. The article thus tends directly of indirectly to bring Government into hatred of contempt. Explanations (1) and (2) would not protect the article inasmuch it is not restricted to more comments expressing disapprobation of Government's policy towards the refugees but by its general tenor and language can be said to excite or attempt to excite hatred or contempt.

Sd/- P.J.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. No.4022, dated the 26th April 1948.

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether both the articlesunder the headings "Telengana Peasant Battles for our entire people" and "One by one feudal bastions crumble in Hyderabad" appearing in theissue of the people's Age dated April 11, 1948, or either of them would be actionable.

2. To bring an article within the ambit of section 124A of the Indian Penal Code, what is necessary is that the words written should bring or attempt to bring into hatred or contempt,or excite or attempt to excite disaffection towards, Government established by law. The essence of the crime of sedition under section 124A consists in the intention with which the language is used, andthis intention has to be gathered from the article read as a whole and also from the surrounding circumstances such as the time, the place, the circumstances such as the time, theplace, the circumstance and the occasion of thepublication. See Bal.Gangadhar Tilak, 22 Bom.112. But to bringan article within the purview of clause (d) of section 4(1) of Indian Press Emergency Powers Act, 1931, the intention of the accused is immaterial, and theonly material question is the tendency or effect of the words, signs or visible representations complained of. See Anand Bazar Patrika, 60 Cal.408. The Explanations 2 and 3 to section 124A of the Indian Penal Code and Explanations 2 and 3 to section 4(1) of the Indian Press Emergency Act are similarly worded. In Bal-Gangadhar Tilak, 10 Bom.L.R.848, it was held:

"Explanations 2 and 3 to section 124A of the Indian Penal Code give perfect freedom to journalists, to publicists, to orators and public speakers to discuss measures and administrative acts of Govern ent, to disprove of them, to attack them and to use forceful and strong language if necessary and to bringing before the public or the Government the effect that their measures or their actions

everything legitimate and honest in

are.....

are disapproved by a section of the public or by that particular speaker or journalist. But a publicist, a journalist or a sp aker has no right to attribute dishonest or immoral motives to Government. Criticism though harsh and uncompromising must be free from the taint of language which is likely to arouse or calculated to engender feelings of enmity, hatred or disloyalty against Government."

In the light of the aforesaid exposition of law, the two articles in question may be examined. In the first article under the head ng "Telengana Peasant battles for our entire people", an attempt has been made to show that the Telengana peasants have been fighting a heroic battle against the feudalism of Hyderabad and to criticise the action of the Indian Union and of the State Congress for rendering help to the Hyderabad Government in curshing the movement of the Telengana peasants. The apparently objectionable passages are:

"They (the Nizam Government) are are supported by the Government of the Indian Union which by signing the standstill Agreement has already betrayed the Hyderabad movement. Today the Indian Union Government and its agent are making a desperate bid to forge a new agreement, so that the Telengana peasant is crushed jointly.

"The Government of the Indian Union is afraid that the xxxx struggle might spread over the whole of Hyderbad and its own Provinces, that the peasant might demand real freedom.

"In consonance with this pllicy, some of the Provincial Governments like the Government of Madras are helping the Nizam's Government to arrest the leaders of the Telengana movement, the leaders of the State Congress are propagating against the communists and the peasants, thus helping the Nizam.

"It is against these overwhelming odds that the brave peasant of Telengana has to fight. His cause is the cause of the entire people of Hyderabad; of all people who are opposed to the feudal Princes; of the entire people of India who demand an end to the feudal rule. He has sounded the tocsin of anti-feudal democratic revolution and today battles on behalf of the entire people of India.

The Indian Union Government and the capitalist press are doing their best to see that the story of Telegana does not spread; that long before the outside people know about this brave fight, it is crushed. The Telegana peasant is being isolated by perfidious silence and

him in the back by arranging a treacherous deal inxkkx between the Nizam and the bourgeois leaders of the State Congress."

It is apparent from these passages that the Indian Union Government is accused of joining hands with the Hyderabad Government in crushing down the Telegarana peasant movement so that the contagion might not spread to any area within the Indian Dominion. This kind of criticism would fall within explanations 2 and 3 to section 124A of the Indian Penal Code and section 4(1) of the Indian Press Emergency Powers Act in so far as the measures taken by the Indian Government with respect to Hyderabad are denounced. The article attributes no dishonest or immoral motives to Government; nor does it accuse Government of any hostility or indifference to the welfare of the people of the Indian Dominion. The article would be saved by Explanations 2 and 3 to section 124A and section of the Indian Press Emergency Powers Act.

3. The second article is published under the heading "One by one feudal bastions crumble in Hyderabad". In this article, an attempt has been made to describe how the Telengana peasants have been putting up a heroic battle against the forces of feudalism and the armed might of the Nizam. The passages in this article which can be said to be objectionable run as follows:

> "The Union Government has not only supplied arms to the Nizam under the "Standstill Agreement" but his keeping quiet about the manufacture of arms in the State itself. It is reliably learnt that arms and ammunition are being manufactured at top speed; hand-grenades in a Hyderabad Match factory, rifles and pistols in a government building near Nayapul and in Allahuddin building in Secunderabad, and hand-grenades, ammunitions, daggers and spears in a match factory in Manukota.
>
> "All the hypocritical statements of the State Congress leaders and the Union Government Ministers cannot hide the fact that they are supporting the enemies of the Telegana peasants."

These passages excepting the portion which accuses the Union Government of supplying arms to the Nizam are not actionable. Even that portion which might be construed as tending to bring the Central Government into hatred or contempt is only a stray passage. In construing a newspaper article its meaning must be taken from the article as a whole and not from the isolated passages (See Man Mohan Ghosh 38 Calcutta, 253); and a single expression does not constitute the whole seditious (Jaichandra Sircar, 38 Calcutta, 1214). The main question is the general tendency and the effect of the article. The main tendency of this article does not appear to be bring into hatred or contempt Government or to excite any disaffection towards it. Consequently this article which contains merely a criticism of the Central Government's policy towards Hyderabad would also be saved by explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act and would not be actionable under section 124-A of the Indian Penal Code.

Both of these articles no doubt contain a tirade against Nizam of Hyderabad. But since the Hyderabad State is not an acceding State, no action would be feasible under clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/- P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. No.4265 dated 1st May 1948.

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Indian Press (Emergency Powers) Act, 1931.

Sec. 4(1)(j).

Clause (j) of section 4(1) of the Indian Press Emergency Powers), Act, 1931, has not been adapted by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. However "India" as defined in clause (27) of section 3 in the General Clauses Act, 1897, as adapted by the India (Adaptation of Existing Indian Laws) Order, 1947, shall mean as respect any period after the establishment of the Dominion of India all territories for the time being included in that Dominion. The 'Dominion of India' as defined in section 3(1) of the Government of India Act, 1935, shall be a Union comprising (a) the Provinces, hereinafter called the Governor's Provinces, (b) the Provinces hereinafter called the Chief Commissioner's Provinces, ~~hereinafter called the~~ Chief (c) the Indian States acceding to the Dominion in the manner hereinafter provided and (d) any other area that may with the consent of the Dominion be included in the Dominion. "Any State in India" in clause (j) of Section 4(1) of the Indian Press (Emergency Powers) Act would, therefore, mean any acceding State in the Dominion of India. Since Hyderabad has merely executed a Standstill Agreement and has not yet acceded to the Dominion of India, it cannot be considered a State in India within the meaning of clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act. The Standstill Agreement makes no special provision on this point. No action would, therefore, be legally feasible in this case.

Sd/-P.N.Lad.
Remembrancer of Legal Affairs.

D.(roll),No.200,Confl.dated the 5th May 1948.

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Office of the R.L.A.

Article in the issue of People's ge dated 9-5-48.

I.P.(E.P.) Act,1931. Sec.4(1)

The question raised for the consideration of the Remembrancer of Legal Affairs is whether the article appearing in the issue of 'People's Age' dated 9th May 1948 under the heading "A few straight questions to 'Exonerators' of Alwar Maharaja" is actionable.

The article contains a criticism of Government decision exonerating on the basis of the enquiry report the Maharaja of Alwar from all responsibility direct or indirect for the assassination of Mahatmaji. The author of the article alleges that the enquiry held by Government is not thorough and question whether the material facts and circumstances stated therein were taken into account by the Enquiry Committee in exonerating the Maharaja of Alwar. The article ends with quoting a Praja Mandal worker's saying that "the Government enquires are to cheat the people. But the people of Alwar will not be cheated. They had already given their verdict when they drove out the Ruler from the public meeting held to mourn the death of Gandhiji on February 4 by shouting at him: 'Be off, you criminal; Get out of our sight, you murderer'."

The article read as a whole does not appear to contain anything tending to incite people to violence nor to disaffect the people. The article would be saved by explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act, 1931. Since the article does not intend to bring into hatred or contempt or excite disaffection towards the administration established in Alwar State, clause (j) of section 4(1) will have no application.

Sd/-P.L.Lad.
Remembrancer of Legal Affairs.

U.O. to H.D.(Poll), No.257 Confl, dated the 26th May 1948.

Office of the R.L.A.

Article in the issue of 'National Standard' Dated 28-4-1948.

I.P.(E.P.)Act,1931. Sec.4(1).

The first question raised for the consideration of the R.L.A. is whether the article appearing in the issue of National Standard dated the 28th April 1948, under the heading "Pakistan's deep-laid plot to conquer India unearthed" and "How Pakistan's Conquest Plan was foiled" is actionable. The article, after dealing with how Pakistan made a deep-laid plot to conquer the whole of India following its partition and how it was foiled, ends with saying that Pakistan has in the background the idea of conquering India and Kashmir is only a prelude to the execution of its ambitious scheme. This article, read as a whole, tends to embitter the feelings between Hindus and Muslims and consequently comes within the ambit of clause (h) of section 4(1) of the Indian Press (Emergency Powers) Act. Clause(j) of that section has no application to the present case.

2. The second question for consideration is whether the reproduction of this article in other newspapers is actionable. In Alexander Martin Sullivan (1868,11 Cox 44), it was held:-

> "The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news. This will be a matter for the jury in considering the criminal intent; but they must also consider the circumstances under which the writings were copied, the state of the country at the time, the class of persons to who the newspaper is addressed, the nature of the editorial comments accompanying them, if any, or their absence, if none, the general tone of the other writing in the newspaper, as they intent of the publisher is to be inferred from the natural consequences of his act.

The principle laid down in that case will apply to the republication of the article in other papers in the present case and such reproduction would be actionable provided there is nothing in the editoria

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or other articles of the paper indicating that the editor did not associate himself with the view expressed in the republished article.

Sd/- [illegible].M. Lad,
Remembrancer of Legal Affairs.

U.R. to H.D. (Poll) No.258-Confl. Dated 28th May 1940.

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46.

Indian Press (E.P.)Act,1931.

Article published in the issue of "Lokyug" dated 11-4-1948.

Office of the R.L.A.

The question for the consideration of the R.L.A is whether the article appearing in the issue of "Lokyug" dated 11th April 1948 under the heading "Campaign of dismissal in the Indian Air Force: To resist oppression is a crime" is actionable.

It is alleged in the article that in accordance with the secret instructions that were recently issued is sued from the Head Quarters of the Indian Air Force, orders for starting a campaign of dismissal of the selfrespecting soldiers, who struggle for the democratic rights of people in the Air Force all over India have been issue, and that discontent is spreading among these soldiers and complaints for inadequate salaries, colour di crimination and other injustices are being made. The article goes on to say that Government is trying to put a stop to this discontent by imposing penalties like the refusal of leave in respect of those who are considered to be responsible for the spread of discontent. The article ends with the following passage:

> "The hopes of getting justice at the hands of Nehru Government and of the establishment of a real national Air Force have been foiled. and therefore the soldiers are convinced that Government's object is to dismiss the soldiers who are really self respecting and lovers of democracy non the ground of unsatisfactory work, misbehaviour etc."

The article read as a whole appears to deepen the discontent of the soldiers in the Air Force by alleging that Government desires to dismiss such of them as are really selfrespecting and lovers of democracy merely on such flimsy grounds as un-satisfactory work, misbehaviour etc. The articles intends to prejudice or tends to prejudice the discipline or administration of the Indian Air Force. Consequently the article would come with in the ambit of clause (i) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/P.J.Lad.

Remembrancer of Legal Affairs.

No. L.D.(P.)11)No.5123, Dt. the 31st May 1948.

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Office of the R.L.A.

The question referred for the R.L.A's opinion is whether it is possible to take any legal action, for example, prosecution against the editor under the existing law other than the Indian Press (Emergency Powers)Act, 1931, for the article in respect of which R.L.A's opinion No.5123 dated 31st May 1940 was given.

2. The only provisions of law which seem applicable are those contained in section 131 and section 505 of the Indian Penal Code. Section 131 deals with attempts to seduce any airman from his allegiance or his duty; and section 505 applies to publication of a statement or report which is likely to cause any airman to mutiny or otherwise disregard or fail in his duty as such. Thus wording of section 131 may usefully be contrasted with the general wording of clause (1) of section 4(1) of the Indian Press (Emergency Powers) Act, which speaks of a tendency directly or indirectly to prejudice the discipline or administration of any of His Majesty's forces. It will be observed that this clause is worded in general terms and is more comprehensive. The objectionable part of the article in question says that -

> "The sons of big fathers like Sardars and Zamindars, who formerly served the imperialists in a manner extremely humiliating are continuously being promoted since the 15th August; and these 'Indian' officers who came 'patriotes' within a night are carrying on with the traditions of the 'White' officers by oppressing the ordinary soldiers and doing them injustice. Following the strike in the Air Force at Agra,... .. the discontent of the soldiers of the Air Force has been intensified all the more, their hopes of getting justice at the hands of Nehru Government and of the establishment of a real national Air Force have been foiled. And (therefore) the soldiers are convinced that Government's object is to dismiss the soldiers who are really self respecting and lovers of democracy on the ground of 'unsatisfactory work', misbehaviour etc."

Although one can reasonably infer an indirect tendency

from these words for prejudicing the discipline or the administration of the Air Force, they would not be sufficient for supportin, a charge of an attempt to seduce airmen from their allegiance or their duty. The words would not warrant the inference that the author or the publisher of the article attempted to seduce the airmen, i.e. in other words, to draw them aside from their path of duty.

3. Section 505 requires a likelihood to cause airmen to disregard or fail in their duty. By "likely" we mean "in all probability". It has been held that the words "tend directly or indirectly" mean something more than"have a possible result", and that threre must be something morethan a mere possibility. Per Weston J.in re. New Sind, XX I.L.R. 1942 Karachi p.127 at p.145. Likelihood to cause any result may, therefor., be indistinguishable from a tendency to cause that result. However, the likelihood required by section 505 is that of causing airmen to disregard or fail in their duty, which is again something more than the likelihood or tendency to prejudice the discipline or administration of the Air Force. It is difficult to spell out of the language of the article a likelihood of the kind demanded by section 505.

4. On the whole, I would not be inclined to bring the article either under section 131 or even under section 505 of the Indian Penal Code. In my opinion, therefore, the article does not seem actionable under the general law.

Sd/- . M.Lad.
Remembrancer of Legal Raff Affairs.

U.O. to H.D.(Poll)No.383 Confl. dated the 6th June 1948.

H.H.J.1/6/56

40.

Article in People's Age, dated 23-5-48, under the heading 'Making free gift of Kashmir to foreign Powers."

Explanations 3 and 4 to section 4(1) of the Indian Press (Emergency Powers) Act,1931.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the article published in the issue of "People's Age" dated 23rd May 1948 under the heading "Making free gift of Kashmir to foreign powers" is actionable.

In this article it is alleged that although the U.N.O. Security Council Resolution has not been accepted in full by the Indian Dominion, at least it has been accepted partly to the extent of plebscite administration by the Commission appointed by the U.N.O. Security Council, and such acceptance is a thin end of the wedge whereby the United States which dominates the Commission would ultimately be able to establish Anti-Soviet base for further penetration so that those who have invited U.N.O. intervention will soon realise that they have invited King Stodk to rule over them. This is further amplified by making a definite assertion that the American imperialists, intent on encircling the U.S.S.R. from all sides will find in Gilgit a spot after their hearts' desire proclaiming it either as a free country or as an international democracy where everyone, i.e.,America, would be welcome; and if this happens India and Pakistan will have the credit of giving a base to a foreign imperialist power- a base in our land and against a friendly Socialist neighbour - a crime which history will never forgive. It is further alleged that the policies pursued by Government of Pakistan and the Government of India Union- the Policy of Pakistan

Government.....

Government of acting as the tool of British imperialism by supporting the raiders and the policy of the Indian Union Government of seeking imperialist "arbitration" .. both are leading to dangerous results, opening the road to imperialist intervention and creating a base for permanent intervention on our borders and endangering the freedom an liberty of the people of Kashmir. The article ends with a call to the people of the Indian Union and Pakistan to rouse the people of Kashmir to resist the Security Council Commission and to arm them so that United Kashmir would be democratic and free Kashmir.

The article read as a whole appears to criticise the policy both of the Indian Dominion and Pakistan in inviting the security Council Commission to arbitrate; for, such arbitration instead of being in the interest of both the countries would ultimately play a game for political domination. It is, therefore, clear that the article does not tend to disaffect the people of the Indian Dominion nor does it tend to bring that Government into hatred or contempt. The article would be saved bt explanations 3 and 4 section 4(1) of the Indian Press (Emergency Powers) Act.

Sd/- P.M.Lad.

Remembrancer of Legal Affairs.

C.R. to H.D. (Political), No.5501 dated the 12th June 1948.

Office of the H.L.A.

In the leaderette under the caption "Refugee Muslims" in the issue of 'Navayug' dated 23-5-48, comments are made about the return of Muslims from Pakistan. It is said that hordes of such Muslims are returning to India, and they are creating difficultios for the Government of India. That Government is not in a position to solve the problem of the Hindu and Sikh refugees, and the Muslim refugees would, therefore, be an additional strain. To feed them would be like starving oneself to feed others. Judging by the history so far, it is doubtfull how far we can trust these Muslims. The relatio between the Nizam and India are getting strained day day, and it may be that the steady stream of refugees from the North West has some connection with that question. The article ends by saying that we must not allow these treacherous fifth columnists to create confusion in the country; that it is possible that they may start a demand for a second and third Pakistan; and that, therefore, the Government of India should proceed with caution in time; that whether the State be secular or not, it is necessary that it should be homogeneous.

2. The question raised for H.L.A.'s consideration i whether the article comes within section 4(1) (h) of the Indian Press (Emergency Powers) Act, 1931. Section 4(1)(h) requires that the article should tend directly or indirectly to promote feeling of enmity or hatred between different classes of His Majesty's subjects. This clause is subject to Explanation 4 which provides that words pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity

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or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in clause (h) of this sub-section. The article no doubt is a powerful plea not to give shelter to the Muslim refugees. They are stigmatized as treacherous and possible fifth columnists, and a suggestion is even made that their immigration may have some connection with the progressive deterioration of our relations with Hyderabad. Nevertheless, there is nothing in the article from which we can gather any malicious intention as such. But the article appears to have been written with an honest view to the removal of a matter which has a tendency to produce feelings of enmity between Hindus and Muslims.

3. In my opinion, therefore, the article would get the protection of Explanation 4 and would not therefore, be actionable under clause (h) of section 4 (1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/- P.N. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. No.5861, dated the 17th June 1948.

E.R.N.1/6/86

4C.

Office of the R.L.A.

Question whether article in 'Rohini" attacking Mahatma Gandhi and Pandit Nehru for their policies is objectionable.

Indian Press (Emergency Powers) Act,1931. Sec.4(1)(d)&(h).

The article contains a criticism of the policy of the Central Government towards Kashmir and states that Government has failed to prosecute vigorously the campaign for driving out the Tritesmen, and that instead of risking a defeat at the plebiscite it would be far more advisable for the Central Government to agree to the partition of Kashmir whereby even the impending problem of re-habilitation of Sind and Western Punjab refugees would be solved; and that there would be no objection to such partition when the partition of India has been already effected. The article no doubt uses rather strong language in criticising the policy pursued by Pandit Jawaharlal Nehru and Mahatma Gandhi. Pandit Nehru is described as almost a Muslim, and Mahatma Gandhi is credited with the aspiration of being a super-Buddha. They are both accused of playing with the lives of Hindus, and of handing over to Muslims the lives of the Hindus in Kashmir and the Honour of their women. Criticism in bitter terms is also made of the fast undertaken by Mahatma Gandhi and of the change of policy by Pandit Nehru consequent upon that fast; that is said to be the very negation of democracy.

2. The article can be viewed as a criticism of (1) the Government's policy regarding Kashmir and (2) the conduct of Mahatma Gandhi and of Pandit Nehru in respect of that policy. When the article is viewed as a criticism of Government's policy, it would be entitled to the protection of Explanations 2 and 3 to section 4(1) of the Indian Press (Emergency Powers) Act; for, the main purpose of the article is to suggest that the solution of the partition of Kashmir should be accepted. It has been repeatedly laid down that these Explanations give freedom to journalists to discuss the measures and administrative acts of Government, to disapprove of them, to attack them and

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to use forceful and strong language, if necessary and to do everything legitimate and honest to bringing before the public or the Government the fact that their measures or their actions are disapproved by a section of the public. The criticism no doubt is harsh and uncompromising; but when it is read in a fair and liberal spirit, the language is not capable of leading to the inference that it was likely to arouse or calculated to engender feelings of enmity or hatred against Goverment. The personal criticism levelled against Pandit Nehru and Mahatma Gandhi would not be actionable under section 4(1). Having regard to the dominant purpose of the article, it would also be difficult to say that it had a tendency to promote feelings of enmity or hatred between different classes of His Majesty's subjects; and in that respect, the article would be protected by Explanation 4. 3. There is, however, one objectionable feature of the article to which I would like to draw attention. Mahatam Gandhi is criticised in the article as Andaheri (horrible) as hypocrite and as one whose intentions are ver difficult to fathom and who imposes his will by threats of fasting xxxx unto death. The paragraph entitled "Mahatma's influence must be read in the light of this preceding criticism. That paragraph says in so many words that Mahatamaji is an enemy of the Hindus, and that he wishes to live 125 years and if possible 130 years following this policy inimical to the Hindus. The concluding portion is very significant "From this it will become apparent whose enemy and whose friend Mahatamji is. He proposes to serve humanity pursuing this policy. If the Hindus believe that they too are born human beings, they should bow to, and they should pray a God that he be pleased to devise ways and meansfor saving us from such benefactor". This article is actually published a day after the assassination of Mahatma Gandhi, and presumably it must have been written before that assassination and after the first attempt on

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his life was made since fast. Upon the language of this paragaph, it should not be difficult to infer the desire on the part of the author that God should put an end to Mahatma Gandhi's life; If we consider the cumulative effect of all the material circumstances, it may be possible to infer a tendency to i cite or to encourage the offence of murdering or doing violence to Mahatma Gandhi. I have an impression that the author publicly apologised for the fact that the article was capable of such interpretation and that he d d not intend it. That would be a circumstance which would strengthen the inference of a tendency which is all that clause (a) to section 4(1) demands. However, I must confess that the position is not quite free from doubt, and if Government proposes to take any action, they might fortify themselves h the advice of the Advocate General.

Sd/- P.H. Lad.
Remembrancer of Legal Affairs.

B.K.L.1/6/56 . U.R. to H.D.(Poll) , No.653 D/- 6th June 1948.
4C.

Office of the R.L.A.

The R.L.A's advice is sought on the question whether any of the four articles appearing under the following captions in the issue of the Blitz dated the 3rd July 1948, is actionable under the Indian Press (Emergency Powers)Act, 1931.

(1) Let Nehru be the first to be punished (page 1).

(2) The difference between people's press and the stooge press (page 9.)

(3) Police Blitz on opposition Press (page 15).

(4) Broadcasting in India under police control (page.20)

1. The first articles refers to the text on an agreement sent to the press by the Home Department of the Government of Bombay relating to the press between the Governments of India and Pakistan with the injunction "to see that these terms are strictly honoured and no breach thereof is committed." The terms of the agreement are stated, and the comment is made that although Pakistan leadership and press have been vomiting out the vilest type of propaganda against the Indian Union, and Pakistan's armies are fighting our forces all across the Kashmir front, and Pakistan Government have been proved guilty of conceiving, planning and executing the whole invasion of Kashmir by the so-called raiders, yet our Government has the face to warn the Indian Press against anti-Pakistan propaganda. The article then goes on to point out that India's Prime Minister has himself admitted that "Pakistan troops in strength have been opposing the Indian troops on the Uri front", that "the raiders have behind them not only the power of the Pakistan ~~xxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxx~~ Government, but also its army"; and that "short of declaration of war,

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Pakistan has done everything to help the nation". The article concludes by saying that in view of such sensational admissions made by the Prime Minister of India himself, the Indian Government has no justification for abiding by the agreement and still less to ask the press to implement its clauses, and that if Government propose to take action against papers which commit the breaches of this "absurd" agreement, Pandit Jawaharlal Nehru would be the first person to be punished for making war propaganda against Pakistan.

2. This article is a reasoned criticism against the terms of the agreement and against Government's policy of requiring the press to abide by those terms. The criticism no doubt is intemperate in places, as for example, where it is said that the Government of the Indian Union and Pakistan have been indulging in this sort of inter-Dominion Mutt-and-Jeff silly symphony for nearly a year now, as a result of which our Government has been left, like Mutt the sucker, always holding thedirty end of the stick. However, the main purpose of the article is to express disapprobation of the action of Government, and, therefore, it would be protected by explanation 3 to section 4(i) of the Indian Press (Emergency Powers) Act, unless it is shown that it excites or attempts to excite hatred or contempt or disaffection. In construing articels of this kind, Courts follow the policy of reading them as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word to sever themes which may be qualified by the context but endeavouring together the general effect which the whole composition would have on the minds of the public. The stock-in-trade of journalism need not be given undue weight in such construction. Judged

by these standards, it is difficult to say that article excites hatred, contempt or disaffection towards Government, since the whole argument is based upon allegations which are proved to derive support from the speeches made by the Prime Minister himself. In my opinion, therefore, this article would not be actionable under section 4(1).

3. The purport of the second article is to demonstrate that the press in this country is being run by capitalists like Birlas, Camas, Goenkas and Dalmias to whom the Congress is stated to be obliged and who, therefore, take care to see that anti-Congress propaganda is not placed before the public. The occasion for the article seems to be the blackout of the report of the meeting and given undue prominence to the protest made at the meeting by one who is stated to be a habitual heckler and as one who has been described as a "chakeram" (lunatic) in a Bombay Court. In so far as the article condemns the press as a tool of capitialists, it it would not fall under any of the clauses of section 4(1) of the Indian Press (Emergency Powers)Act, even though strong language may have been used. In fact, the most vituperative passage in the article in which the leading dailies of the country are described as having reduced themselves to the status of the hired pimps and prostitutes of the Birlas and Camas and Goenkas and Dalmias who control the Congress and cannot, therefore, permit their stooges and spokesmen at the head of the Congress to be criticised by thepublic seems to have been borrowed from a speech recently delivered by a British Cabinet Minister Mr..(Aneurin Bevan) who speaking about the British press

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said that it was the "most prostituted press in the world most of it owned by a gang of millionaries". The only other objectionable feature of the article is where it accuses the Congress of being controlled by the capitalists and speaks by name in the same breath as Birlas of Hon'ble the Home Minister for Bombay and Hon'ble the Deputy Prime Minister of India as a ending between people who assembled at the rally and their food, their homes, their cloth, their security and the conscience their idol Jawaharlal Nehru. The article read as a whole is intended to show that the press is controlled by capitalists and should, therefore, be boycotted; and that the people should agitate for their own daily paper, a real people's publication, the criticism of the individual ministers and of the congress takes a subordinate place as a subsidiary issue. Moreover, the remarks which are directed against certain individual members of Government in Bombay and at the centre and which criticise a political party as being controlled by capitalists cannot be said to have a tendency to bring Government into hatred or contempt. An individual minister or a political party cannot be indentified with Government as such. The article is not, therefore, actionable.

R.L.'s Opinion No. 271 Confl.dated 19-6-1947.

4. The third article criticizes the police for harassing the newsboys hawking publications "which are out of favour" with what is described as "Sardar-Morarji Government". The police are accused of having balckmailed and intimidated newsboys/into sharing with them their hard-earned commission and finally to have got them fined under the Bombay Hawkers Act. It is stated that

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while the fines have been reported by the press, the sufferings of the boys have not been exposed. They are stated to have been mercilessly blackmailed, beaten up and harassed. The article, therefore, suggests to all newspaper vendors to combine into a union and fight this new manifestation of police raj in the City. The only clause to which this article can be referred is again clause (d) of section 4(1). Inasmuch as the article does not attack the police as a whole but criticizes the actions of a section of the police in Bombay, it cannot be said to be aimed at Government as such. Besides, the comments express disapprobation of the administrative action taken by the police, and there is nothing in the article which can be said to excite or attempt to excite hatred, contempt or disaffection towards Government; and for that reason even if it were treated as aimed against Government, it would be protected by Explanation 3.

Cf.S.L.A's opinion No. 3466 dated 10-4-48.

5. The occassion for the last article is the 21st anniversary of broadcasting in Bombay. The article gives to history of broadcasting and describes the various stages through which the radio in Bombay has gone under different administrations. The only objectionable feature is in the concluding portion of the article where it is said that since the national Government took over, there is a specific ban on all communists, socialists and progressive persons and on the other hand persons connected with the R.S.S. and Hindu Mahasabha are accepted.

The articles makes the criticism that every one whose name is intended to be included in the radio programmes has first to be okayed by the Home Department and the police, and the parting remarks is made" and so freedom marches on". The gist of this latter part of the article, therefore, is that the All India Radio is not an institution where all shades of thought are allowed free scope but that it systematically excludes leftist and progressive thought and judges the talks and their authors by the standards of the Home Department and the police. This is a criticism of the working of a Department of Government, and there is nothing in it which can be said to excite hatred, contempt or disaffection towards Government, and, therefore, the article would be protected by Explanation 3 to section 4(1) and would not be actionable.

Remembrancer of Legal Affairs.

F.C.signed by
R.L.A.

U.R. to Secretary A.D.No.6261, dated the
5th July 1948.

Office of the R.L.A.

The article in question was published in the issue of the 'Lokyug' dated 30th May 1948, i.e. over a month ago. Only two days after its publication, Mr.Chaudhari was released by the Commissioner of Police. No doubt, we can say with greater show of reason than in the case of 'March' (now under active consideration) that the report tended to be prejudicial to public safety or t an quility. Nevertheless that point is not free from doubt and can be settled after that legal advice in the 'March' case is finalised. Moreover the order under section 9A is to be made for preventing prejudicial activities. At the distance of time, the question of prevention precedes entirely into the background; and for that reason also, theordor isliable to be challenged. In these circumstan es it is a matter for consideration whether it would not be more expedient to sent the letter at p.27 than to serve the order.

Sd/ P.[illegible].Lad.

Remembranc r of Legal Affairs.

U.R. to Secy. H.D. No.6333, dated the 6th July 1948.

D.K.N. 1/6/56.

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